

1 SENATE BILL NO. 473

2 INTRODUCED BY ELLIOTT, ROBERTS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A PRESCRIPTION DRUG EXPANSION
5 PROGRAM UNDER MEDICAID; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN
6 SERVICES TO IMPLEMENT THE PRESCRIPTION DRUG EXPANSION PROGRAM UNDER MEDICAID;
7 PROVIDING AN ANNUAL ENROLLMENT APPLICATION FEE FOR THE PROGRAM; AUTHORIZING A LOAN
8 FROM THE BOARD OF INVESTMENTS FOR THE STARTUP COST OF THE PROGRAM; AND PROVIDING
9 AN EFFECTIVE DATE AND A TERMINATION DATE."

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11 WHEREAS, the Legislature finds that the cost of prescription drugs is a major threat to the public health
12 of Montana citizens; and

13 WHEREAS, other states have implemented innovative prescription drug access and affordability
14 legislation that can be adapted to meet Montana's needs; and

15 WHEREAS, the Legislature finds it necessary to provide some relief for the high cost of prescription
16 drugs by using an expanded Medicaid program for which reimbursement will be sought through Medicaid
17 rebates and federal reimbursement programs.

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19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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21 NEW SECTION. Section 1. Definitions. As used in [sections 1 through 7], unless the context requires
22 otherwise, the following definitions apply:

23 (1) "Average wholesale price" means the wholesale price charged on a specific commodity that is
24 assigned by the drug manufacturer and is listed in a nationally recognized drug pricing file.

25 (2) "Department" means the department of public health and human services provided for in Title 2,
26 chapter 15, part 22.

27 (3) "Discounted price" means a price that is less than or equal to the average wholesale price, minus
28 a percentage between 6% and 25% determined by the department pursuant to [section 2], ~~plus the dispensing
29 fee provided under the medicaid program under Title 53, chapter 6.~~

30 (4) "Gross household income" has the meaning provided in 15-30-171.

1 (5) "Manufacturer" means a manufacturer of prescription drugs and includes a subsidiary or affiliate of
2 a manufacturer.

3 (6) "Participating retail pharmacy" means a retail pharmacy located in this state or another business
4 licensed to dispense prescription drugs in this state that is medicaid-approved.

5 (7) "Program" means the medicaid prescription drug program provided for in [section 2].
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7 **NEW SECTION. Section 2. Prescription drug expansion program -- rules.** (1) ~~The~~ BY JULY 1, 2004,
8 OR UPON SECURING ANY NECESSARY WAIVERS, THE department shall provide for an expansion of prescription drug
9 benefits under the medicaid program by offering prescription drugs at a discounted price to qualified individuals
10 whose income is at a level set by the department at ~~up to 300%~~ OR BELOW 200% of the federal poverty level. ~~The~~
11 SUBJECT TO SUBSECTION (7), THE department shall charge an annual ~~enrollment~~ APPLICATION fee of \$25 for the
12 program. The ~~enrollment~~ APPLICATION fee must be deposited in the medicaid prescription drug rebate account
13 established in subsection (2).

14 (2) There is a medicaid prescription drug rebate account in the state special revenue fund to the credit
15 of the department. All money received by the state as rebates from pharmaceutical manufacturers for the
16 medicaid prescription drug expansion program must be deposited in the account. The money in the account,
17 which is administered by the department, must be used to expand medicaid prescription drug benefits. Interest
18 on account balances accrues to the account. The purpose of the account is to:

19 (a) reimburse participating retail pharmacies for the ~~discounted price less~~ DISCOUNT ON the average
20 wholesale price of prescription drugs provided to qualified residents pursuant to [sections 1 through 7]; and

21 (b) reimburse the department for contracted services, administrative costs, associated computer costs,
22 professional fees paid to participating retail pharmacies, and other reasonable program costs.

23 (3) The department shall provide for sufficient personnel to ensure efficient administration of the
24 program. The extent and the magnitude of the program must be determined by the department on the basis of
25 the calculated need of the recipient population and available funds. The department may not spend more on this
26 program than is available through appropriations, federal or other grants, and other established and committed
27 funding sources. The department may accept, for the purposes of carrying out this program, federal funds
28 appropriated under any federal law relating to the furnishing of free or low-cost drugs to disadvantaged, elderly,
29 and disabled individuals, may take action that is necessary for the purposes of carrying out that federal law, and
30 may accept from any other agency of government, individual, group, or corporation funds that may be available

1 to carry out [sections 1 through 7].

2 (4) The department may adopt rules relating to the conduct of this program. The rules may be based
3 upon rules adopted in ~~Hawaii~~ MAINE OTHER STATES to administer a similar ~~program~~ PROGRAMS.

4 (5) The department shall adopt rules to establish the discounted price to be charged to participants in
5 the program. The department may establish a discounted price to encourage the use of generic drugs over
6 higher-cost brand-name drugs.

7 (6) The department shall establish by rule eligibility based upon the applicant's family income as
8 provided in [section 3]. The total income may not exceed ~~300%~~ 200% of the federal poverty level. The
9 department may adopt rules defining income. In establishing eligibility based upon income, the department shall
10 take into account the amount of funding available for the program. The department shall issue enrollment cards
11 to eligible individuals.

12 (7) ESTABLISHMENT OF THE PRESCRIPTION DRUG EXPANSION PROGRAM IS CONTINGENT UPON APPROVAL BY
13 THE FEDERAL GOVERNMENT THAT THE PROGRAM IN [SECTIONS 1 THROUGH 7] WILL QUALIFY FOR FEDERAL FINANCIAL
14 PARTICIPATION UNDER FEDERAL LAWS IMPLEMENTING THE MEDICAID PROGRAM. THE DEPARTMENT MAY ADOPT RULES
15 NECESSARY TO IMPLEMENT CONDITIONS REQUIRED BY FEDERAL LAW OR CONDITIONS REQUIRED AS PART OF THE FEDERAL
16 GOVERNMENT'S AGREEMENT TO WAIVE CERTAIN REQUIREMENTS OF FEDERAL LAW.

17 (8) IF PROGRAM COSTS ARE EXPECTED TO EXCEED THE LEGISLATIVE AUTHORIZATION FOR THE PROGRAM, THE
18 DEPARTMENT SHALL ADJUST DISCOUNTED PRICES, THE APPLICATION FEE, OR ELIGIBILITY STANDARDS TO MAINTAIN THE
19 PROGRAM WITHIN THE AVAILABLE FUNDING.

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21 NEW SECTION. Section 3. Eligibility -- income determination. (1) To be eligible for the program,
22 an individual must be:

23 (a) at least 62 years of age; ~~or~~

24 (b) 18 years of age or older and determined to be disabled by ~~the standards of~~ the federal social security
25 program; OR

26 (C) ELIGIBLE FOR MENTAL HEALTH SERVICES PURSUANT TO 53-21-702(2).

27 (2) ~~Individuals~~ SUBJECT TO [SECTION 2(8)], INDIVIDUALS are eligible for the program if the gross household
28 income is at or below the amount set by the department, which may not be more than ~~300%~~ 200% of the federal
29 poverty level.

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1 NEW SECTION. Section 4. Specifications for administration of program. (1) The department shall
2 adopt specifications for the administration and management of the program. Specifications may include but are
3 not limited to program objectives, accounting and handling practices, supervisory authority, and an evaluation
4 methodology. The department shall apply for any waivers of federal law that are necessary to implement the
5 program.

6 (2) INFORMATION DISCLOSED BY MANUFACTURERS DURING NEGOTIATIONS AND ALL TERMS AND CONDITIONS
7 NEGOTIATED BETWEEN THE DIRECTOR AND MANUFACTURERS AND ALL INFORMATION REQUESTED OR REQUIRED UNDER
8 THE PROGRAM MUST BE KEPT CONFIDENTIAL, EXCEPT AS THE DEPARTMENT DETERMINES IS NECESSARY TO CARRY OUT
9 THE PROGRAM. THE DEPARTMENT SHALL COMPLY WITH THE BUDGET NEUTRALITY PROVISIONS REQUIRED BY THE UNITED
10 STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR THE GRANTING OF ANY WAIVERS.

11 (3) THE DEPARTMENT MAY NOT USE ACCESS RESTRICTIONS, SUPPLEMENTAL REBATES, OR A PREFERRED DRUG
12 LIST TO COMPLY WITH THE BUDGET NEUTRALITY PROVISIONS WHEN NEGOTIATING WITH THE FEDERAL GOVERNMENT FOR
13 THIS WAIVER. THESE RESTRICTIONS DO NOT APPLY TO OTHER COMPONENTS OF THE MEDICAID OR MENTAL HEALTH
14 SERVICES PLAN OR DRUGS PROVIDED IN THOSE PROGRAMS. THESE RESTRICTIONS APPLY ONLY TO THE PRESCRIPTION
15 DRUG EXPANSION PROGRAM PROVIDED FOR IN [SECTION 2].

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17 NEW SECTION. Section 5. Appeals. An eligibility determination made by the department based on
18 information provided by the department of revenue is final, subject to appeal in accordance with the appeal
19 process established in the medicaid program.

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21 NEW SECTION. Section 6. Obligations of department. The department shall establish simplified
22 procedures for determining eligibility and issuing Montana prescription enrollment cards to qualified individuals
23 under [section 2] and shall undertake outreach efforts to build public awareness of the program and maximize
24 enrollment of qualified individuals. The department may adjust the requirements and terms of the program to
25 accommodate any new federally funded prescription drug programs.

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27 NEW SECTION. Section 7. Contracting. The department may contract for the administration of any
28 components of the program, including but not limited to outreach, eligibility, claims, administration, and drug
29 rebate recovery and redistribution.

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